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W.A.No.3633 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A.No.3633 of 2019
and
C.M.P.No.23249 of 2019**

1. The State of Tamil Nadu,
Represented by
Secretary to Government,
Home Department,
Secretariat,
Chennai - 600 009.
2. The Director General of Police,
Kamarajar Road,
Chennai - 600 004.
3. The Superintendent of Police,
Nagapattinam District,
Nagapattinam.

... Appellants

-Vs-

K.Nagarajan
S/o.Late Kaliyaperumal

... Respondent

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 05.11.2013 made in W.P.No.13107 of 2013.



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For Appellants : Mr.K.V.Sanjeev Kumar
Special Government Pleader

For Respondent : Mr.L.Chandrakumar

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This writ appeal has been directed against the order passed by the writ Court dated 05.11.2013 made in W.P.No.13107 of 2013.

2. The respondent was working as a Sub-Inspector of Police and his next promotion avenue is Inspector of Police. However, there has been disciplinary proceedings against him which ended in a punishment which was awarded by the Deputy Inspector General of Police, Thanjavur Range, Thanjavur, by his proceedings dated 10.09.2008, under which, a minor punishment of stoppage of increment for two years without cumulative effect was awarded against the respondent.

3. In this context, it is the case of the respondent / writ petitioner that the currency of punishment, i.e., for two years since starts from 10.09.2008 is over by 10.09.2010, therefore, from 11.09.2010, he would be eligible to be considered for all service benefits including the promotional avenue and as on



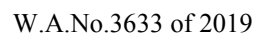
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01.06.2011, which was the crucial date for the promotion to the post of

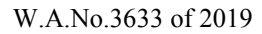
Inspector of Police since the respondent / writ petitioner was eligible, he should have been considered for such promotion. However, since he was not considered for such promotion, he had approached this Court and filed the said writ petition questioning the order postponing the promotion to the writ petitioner beyond 13.07.2011, i.e., after 01.06.2011, crucial date. The said writ petition, having been heard, was allowed by the learned Judge through the impugned order.

4. Assailing the same, Mr.K.V.Sanjeev Kumar, learned Special Government Pleader appearing for the appellants would contend that, as per the instruction to Rule 24 of the Fundamental Rules, if a Government servant avails leave during the period of punishment, the period of punishment shall be extended, during such extended period, if he again goes on leave, the increment shall be postponed further corresponding to the period of leave availed of by him, during the extended period of punishment.

5. By relying upon this instruction to Rule 24 of the Fundamental Rules, the learned Special Government Pleader would canvass the point that, insofar as the respondent / writ petitioner is concerned, though the order of punishment



6. If that is extended up to 13.07.2011 before which the crucial date falls on 01.06.2011 for promotion for the year 2011, his name could not be included or considered on the said crucial date, i.e., 01.06.2011, therefore he is not entitled to get such promotion in the year 2011, since that has been extended or postponed till 13.07.2011, such action made by the appellant Department is in consonance with the Rules position and therefore, that cannot be tinkered with. The approach of the learned Single Judge in allowing the writ petition directing the appellants to give promotion to the respondent / writ petitioner taking the crucial date, i.e., 01.06.2011 is erroneous and hence, the learned Special Government Pleader seeks indulgence of this Court against the impugned order.



8. We have considered the said rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.



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9. As has been rightly pointed out by the learned counsel appearing for the respondent, assuming that the next increment due falls on 01.04.2009, that should have been made cut by implementing the punishment awarded against the respondent / writ petitioner. Thereafter, the second increment would have fallen on 01.04.2010, that would also have been considered and has been made a cut.

10. If these two increments had been cut-in, the two years period start from 01.04.2009 should be ended by 31.03.2011, within which, since two increments fall and those increments were made to cut-in, beyond which no punishment can be implemented against the writ petitioner, as the punishment imposed against him cutting increment is only for two years.

11. Merely because he has applied leave and availed leave for 240 days under various counts, it cannot be stated that during the leave period, the punishment can be extended and therefore, the 240 days punishment has to be extended, thereafter only the punishment can be implemented is not a correct approach. The reason being that, whatever the leave availed by the writ petitioner under various heads including the medical leave whether was sanctioned by the authorities is the question. Here admittedly the leaves have



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been completely sanctioned, when the leaves were sanctioned, it is justifiable

on the part of the writ petitioner that he has availed the leave, for which, he is entitled to. Merely because he availed the leave, the punishment of cut-in increment could not have been postponed, therefore the two annual increments if it is made a cut of the years 2009 and 2010, the two years currency of punishment certainly would come to an end by 31.03.2011, therefore, from 01.04.2011, it cannot be stated that, there has been still currency of punishment as has been claimed by the appellants. Therefore on the crucial date which falls on 01.06.2011 for the promotion of the year 2011, the respondent / writ petitioner was without any currency of punishment, therefore, his name ought to have been considered by taking the crucial date as 01.06.2011 and accordingly, if he is otherwise eligible to be considered for promotion to the post of Inspector of Police, his name should have been included and considered for such promotion.

12. Negating such a plea raised by the respondent / writ petitioner by giving the reason that, the currency of punishment has been postponed upto 13.07.2011 by citing the reason that he has availed the leave of course, sanctioned leaves, is thoroughly unjustifiable as such kind of leverage has not been given even under the instruction to Rule 24 of the Fundamental Rules.



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Therefore such an approach made by the appellant Department is completely flawed, therefore the learned Judge having considered all these aspects has rightly allowed the said writ petition through the impugned order and we are of the considered view that, the said order of the writ Court does not warrant any interference at our hands.

13. Resultantly, the appeal fails, hence it is liable to be dismissed and accordingly, it is dismissed. The direction given by the learned Judge, if at all so far has not been implemented, shall be implemented within a period of eight weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (G.A.M., J.)
15.11.2023

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji



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To

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The State of Tamil Nadu,
Home Department,
Secretariat,
Chennai - 600 009.
2. The Director General of Police,
Kamarajar Road,
Chennai - 600 004.
3. The Superintendent of Police,
Nagapattinam District,
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